

STATE OF MICHIGAN
COURT OF APPEALS

PATRICK KLOOSTRA, SR.,

Plaintiff-Appellee,

v

DEANNA LYNN KLOOSTRA,

Defendant-Appellant.

UNPUBLISHED

July 19, 2011

No. 302006

Kent Circuit Court

LC No. 99-005898-DM

Before: TALBOT, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

In this postdivorce custody dispute, defendant Deanna Lynn Kloostra appeals as of right challenging a December 2010 order denying her motion to modify custody. We affirm the trial court's order, and remand for the continuation of these proceedings.

Patrick and Deanna Kloostra married in 1991 and divorced in 2001. The marriage produced three children, who currently range from 12 to 21 years of age. The judgment of divorce awarded the parties joint legal custody of the children, with Deanna having primary physical custody. A specific parenting time schedule set forth in the judgment governed Patrick's parenting time. Over the course of the next two years, the parties fought multiple, bitter battles regarding parenting time and child support. The circuit court ordered the parties to mediate their disputes, and in January 2003, entered a new parenting time order.

Unfortunately, the 2003 order failed to resolve the parties' unrelenting conflicts. Due to the seriousness of the parties' allegations and counter-allegations, the circuit court appointed a guardian ad litem to represent the interests of the three children. Finally, after arguing still more motions and attending countless hearings, the parties stipulated to a 2005 custody order granting Patrick physical custody of all three children. The stipulated order afforded Deanna limited parenting time.

Despite that Deanna had stipulated to the 2005 custody order, she persisted in challenging it. Patrick, too, sought to modify the order based on changed circumstances. Following an August 2008 hearing, the circuit court ordered supervision of Deanna's visits with her children. The factual basis for supervised parenting time is unclear, because the circuit court record does not include the hearing transcript. Predictably, however, this order fueled more controversy. Deanna visited her children in a supervised setting for only a short period of time. After two

different supervising agencies refused to facilitate Deanna's parenting time, the visits ceased. Deanna has not seen her two younger children for more than two years.

In April 2009, the original circuit court judge assigned to the case requested to be relieved of her responsibility, asserting that she "has been the target of abuse and criticism by the parties or others," and that the parties' "focus ... has been the harassment of the judge rather than the best interest of the children." Two other circuit judges declined to undertake the matter, based on their bias or prejudice toward the parties or their counsel. In May 2009, Judge Daniel V. Zemaitis accepted the assignment.

Undaunted by these developments, Deanna filed a flurry of new motions, including a request for a new parenting time schedule. After entertaining argument on these motions, Judge Zemaitis continued his predecessor's supervised parenting time order. Nevertheless, Judge Zemaitis agreed to conduct an evidentiary hearing addressing the appropriateness of the currently-assigned parenting time supervisor. Judge Zemaitis's order provided that Deanna would bear responsibility for arranging the evidentiary hearing. But instead of proceeding in that direction, Deanna filed a motion to modify custody, characterizing the existing custody and parenting time orders as a denial of due process. Judge Zemaitis heard oral argument regarding Deanna's custody motion, urged Deanna to arrange for the previously-ordered evidentiary hearing, and expressed that in the absence of new evidence, she had not established proper cause or a change in circumstances to change custody as required by *Vodvarka v Grasmeyer*, 259 Mich App 499, 508; 675 NW2d 847 (2003).

Deanna now challenges the circuit court's ruling, contending that it violates her constitutional rights. Child custody orders "shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of the evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." MCL 722.28; *Fletcher v Fletcher*, 447 Mich 871, 876-877, 526 NW2d 889 (1994).

The Child Custody Act "is intended to erect a barrier against removal of a child from an established custodial environment and to minimize unwarranted and disruptive change of custody orders." *Heid v AAASulewski (After Remand)*, 209 Mich App 587, 593-594; 532 NW2d 205 (1995). Before a circuit court may consider whether an established custodial environment exists or review the best interest factors, it first must determine whether the movant has established either proper cause or a change of circumstances. *Vodvarka*, 259 Mich App at 509. This Court described in *Vokvarka* that "in order to establish a 'change of circumstances,' a movant must prove that, since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a *significant* effect on the child's well-being, have materially changed." *Id.* at 513 (emphasis in original). We pointed out in *Vodvarka* that time always produces some alterations in a child's "environment, behavior and well-being," but that "normal life changes" do not suffice to demonstrate changed circumstances; instead, "there must be at least some evidence that the material changes have had or will almost certainly have an effect on the child." *Id.* at 513-514. The circuit court must make findings of fact with respect to whether a movant has established proper cause or a change of circumstances to warrant an evidentiary hearing regarding a proposed custodial change, and these findings "should be affirmed unless the evidence clearly preponderates in the opposite direction." *Id.* at 507, 512 (internal quotation omitted).

In this case, we discern no error in the circuit court's conclusion that Deanna failed to establish a change of circumstances or proper cause to change custody that would merit an evidentiary hearing concerning the children's custody. We also find no merit in Deanna's constitutional arguments. Throughout this protracted litigation, she fully participated in all proceedings. Because Deanna has been afforded a robust and meaningful opportunity to be heard by the court, her due process rights remain intact.

We have no doubt that additional motions will follow the issuance of this opinion. Accordingly, we take this opportunity to clarify that this opinion expresses no view concerning the ultimate resolution of Deanna's pending motion to alter the existing *parenting time* order. Based on Judge Zemaitis's exemplary handling of this most difficult matter to date, we are confident that further parenting time requests will undergo careful consideration consistent with this Court's recent decision in *Shade v Wright*, __ Mich App __; __ NW2d __ (Docket no 296318, issued December 2, 2010), slip op at 6, which instructs that "a more expansive definition of proper cause or change of circumstances is appropriate for determinations regarding parenting time when a modification in parenting time does not alter the established custodial environment."

Affirmed and remanded for continued proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly